

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Dever	Team: Team # 1	CCRB Case #: 200608695	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/30/2006 3:45 AM	Location of Incident: West 27th St. & Tenth Ave.	Precinct: 10	18 Mo. SOL 12/30/2007	EO SOL 12/30/2007	
Date/Time CV Reported Sun, 07/02/2006 11:49 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Sun, 07/02/2006 11:49 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Theodore Lauterborn	00000	897840	10th Precinct
2. POM Thomas Garrity	07734	933798	10th Precinct
3. POM Christopher McGee	21037	931819	10th Precinct
4. POM Robert McGarvey	09754	906777	10th Precinct
5. POM Glenn Edmonds	12274	897393	10th Precinct
6. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Patrick Mooney	20363	931835	10th Precinct
2. POM Brian Carr	07581	926650	10th Precinct
3. LT Patrick Keefe	00000	917810	10th Precinct
4. SGT Michael Abbruzzese	00388	921100	10th Precinct
5. POM Vincent Candela	12682	928011	10th Precinct

Officer(s)	Allegation	Investigator Recommendation
A.LT Theodore Lauterborn	Force: Lieutenant Theodore Lauterborn struck § 87(2)(b) with an asp.	
B.POM Thomas Garrity	Force: Police Officer Thomas Garrity used physical force against § 87(2)(b)	
C.POM Christopher McGee	Force: Police Officer Christopher McGee used physical force against § 87(2)(b)	
D.POM Robert McGarvey	Force: Police Officer Robert McGarvey used physical force against § 87(2)(b)	
E.POM Glenn Edmonds	Force: Police Officer Glenn Edmonds used physical force against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b)	
G. Officers	Discourtesy: Officers spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	

## Synopsis

On 7-2-06, § 87(2)(b) called the CCRB and reported that LT Theodore Lauterborn of the 10<sup>th</sup> Precinct used excessive force against him at West 27<sup>th</sup> Street and Tenth Avenue in Manhattan on 6-30-06. He stated that he was standing outside a club with a large crowd of people, including § 87(2)(b), § 87(2)(b) and § 87(2)(b), when a group of uniformed officers ordered them to move. § 87(2)(b) did not comply because he was talking on a cellular phone. Shortly afterward, LT Lauterborn approached him and asked him to move. § 87(2)(b) stated that he began moving and LT Lauterborn pushed him. § 87(2)(b) asked, “Why are you pushing me?” at which point LT Lauterborn struck him once in the head with an asp. He then grabbed § 87(2)(b)’s arm and struck him several times in the ribs with the asp. § 87(2)(b) fled the scene, but returned minutes later and was handcuffed by another officer. § 87(2)(b) stated that two officers threw him against a vehicle and kneed him in the ribs after he was handcuffed. He suffered a cut to his head and bruised ribs and received medical treatment at § 87(2)(b). CPT Joseph Longo, the Duty Captain for the Manhattan South Patrol Borough, conducted an investigation of the incident and prepared an Unusual Occurrence Report.

The undersigned investigator interviewed § 87(2)(b) as well as § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged that an officer at the scene, who was later identified as PO Glenn Edmonds, used excessive force against him and that he also received medical attention after the incident. The undersigned obtained the medical records of § 87(2)(b) and § 87(2)(b) LT Lauterborn, PO Edmonds and eight witness officers were also interviewed. In addition, attempts were made to contact and interview other civilians who were present for the incident.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] LT Lauterborn testified to the undersigned investigator that he was attempting to strike [REDACTED] § 87(2)(b) in the leg with the asp when he accidentally struck [REDACTED] § 87(2)(b) in the head.

[REDACTED] § 87(2)(b), § 87(2)(g)

§ 87(2)(b) fled the scene after LT Lauterborn struck him and alleged that when he returned to the scene, officers who were later identified as POs Thomas Garrity, Christopher McGee and Robert McGarvey, handcuffed him, threw him against a vehicle and repeatedly kned him in the side. § 87(2)(g)

§ 87(2)(b) stated that three officers, one of whom was subsequently identified as PO Glenn Edmonds and two others whom he could not describe, used excessive force against him. § 87(2)(b), § 87(2)(g)

## Summary of Complaint

## Unusual Occurrence Report

The Unusual Occurrence Report, prepared by CPT Longo on 6-30-06, states that LT Theodore Lauterborn was traveling westbound on West 27<sup>th</sup> Street heading toward Tenth Avenue

when he observed a large group of disorderly males who had just exited Club Spirit. Some of the males appeared to be about to fight each other. Believing that several assaults were about to occur, LT Lauterborn exited his vehicle and attempted to disperse the disorderly group. At that point, sixteen to twenty males surrounded LT Lauterborn. § 87(2)(b) was the main aggressor of the group, and approached LT Lauterborn in a menacing manner. Fearing for his safety, LT Lauterborn took a tactical position and utilized the minimum amount of force immediately available to him and struck § 87(2)(b) in the forehead with an asp, causing a laceration. § 87(2)(b) fled and was subsequently apprehended. He was removed to § 87(2)(b) where he received five sutures.

IAB interviewed § 87(2)(b) who stated that he was acting as the mediator between the two groups that were arguing. He added that when LT Lauterborn arrived, he approached LT Lauterborn and “got into his face.” LT Lauterborn then suddenly struck him in the forehead and he fled.

IAB interviewed § 87(2)(b) who alleged that officers pushed him into a moving taxi, choked him and punched him. § 87(2)(b) refused medical treatment.

IAB also interviewed § 87(2)(b) § 87(2)(b) a bouncer at § 87(2)(b) § 87(2)(b) § 87(2)(b) stated that a large group of males surrounded LT Lauterborn, who took a tactical stance and struck § 87(2)(b) in the head. A struggle ensued and numerous bouncers from other clubs assisted LT Lauterborn.

#### **Civilian Testimony – § 87(2)(b)**

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male. He stands 5’11” tall and weighs approximately 160 lbs. § 87(2)(b)

§ 87(2)(b) was interviewed by IAB on 6-30-06 and the CCRB on 7-25-06. He stated that 6-30-06 at about 3:45 AM, he left “Club Spirit New York,” which is located at West 27<sup>th</sup> Street and Tenth Avenue, with his friends, § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b). Two groups of club promoters fifty to sixty feet away from the club began loudly arguing. § 87(2)(b) and his friends were not part of either group. They knew people in both groups, so they told the parties to stop arguing so everyone could go home. § 87(2)(b) believed that the management of Club Spirit saw the commotion and called the police.

Shortly afterward, two uniformed officers arrived at the scene, but by that time the two groups had settled the dispute and everyone was walking away on Tenth Avenue. § 87(2)(b) was standing by himself in a small pedestrian pathway that he referred to as a “tunnel.” He was calling his mother on his cellular phone to tell her that he was coming home. He was holding the cellular phone in his right hand and a black shirt in his left hand. The officers said, “Everybody move!” One officer, who was wearing a white uniform shirt, later identified as LT Theodore Lauterborn, was holding an asp. LT Lauterborn lightly pushed § 87(2)(b) and told him to move. § 87(2)(b) told LT Lauterborn that he was going to move. He asked LT Lauterborn why he had pushed him and said that he could tell him to move without touching him. At that point, LT Lauterborn struck him once in the left side of the forehead with the asp. Dazed from the blow, § 87(2)(b) stumbled backward and noticed that he was bleeding. LT Lauterborn then grabbed his right wrist and struck him five to six times in the left side of his ribcage and in the left leg with the asp. § 87(2)(b) stated that § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) all saw LT Lauterborn striking him. § 87(2)(b) stated that he “shrugged off” LT Lauterborn. When the interviewing investigator asked him what that meant, § 87(2)(b) denied physically pulling away from the LT Lauterborn and stated, “It just felt like we just let go...” § 87(2)(b) denied fighting or physically resisting in any manner during his interaction with LT Lauterborn.

§ 87(2)(b) repeatedly asked LT Lauterborn, “Why did you hit me?” but he did not respond. People in the crowd stood in front of LT Lauterborn to prevent him from hitting § 87(2)(b) again. They did not make physical contact with LT Lauterborn. § 87(2)(b) believed that LT Lauterborn called for backup because he saw additional officers approaching him. At that point, § 87(2)(b) fled because he was afraid they were going to assault him as well. He did not see LT Lauterborn again. § 87(2)(b) ran two or three blocks to a less crowded area. He returned to the scene where the incident occurred because he was bleeding profusely and needed medical help. When § 87(2)(b) got back to the scene, three uniformed white male officers approached him and he allowed them to handcuff him. The officers brought him to a marked police vehicle, threw him against the vehicle and asked him if he had drugs or a gun on him. § 87(2)(b) stated that the officers repeatedly kned him in the left side and then placed him inside the vehicle. One of the officers grabbed § 87(2)(b)'s fingers and twisted it while he was in the vehicle. The officers observed that § 87(2)(b) was injured, so they called an ambulance. § 87(2)(b) was subsequently removed from the police vehicle and placed in an ambulance, which transported him to § 87(2)(b).

At the hospital, medical personnel asked him if he was intoxicated. § 87(2)(b) replied that he had consumed two alcoholic drinks, a bottle of Corona and a “Hypnotic,” which is a mix of alcohol and juice. § 87(2)(b) was administered a drug test. Medical personnel asked him if he was dizzy and he replied that he was. § 87(2)(b) received stitches for a cut on his forehead. IAB officers interviewed § 87(2)(b) at the hospital and § 87(2)(b) told them that he had been struck in the head with a metal nightstick. When the IAB officers asked § 87(2)(b) if he was struck again after that, he told them that he had not because he did not feel pain from being struck in the body at that time and was still dazed from being struck in the head.

§ 87(2)(b) was released from the hospital and transported to the 10<sup>th</sup> Precinct stationhouse at about 7:00 AM. He saw § 87(2)(b) and § 87(2)(b) at the stationhouse. § 87(2)(b) noticed that his shirt was bloodstained and that he had black and blue marks on his legs when he was in the cell.

### **Civil Lawsuit**

§ 87(2)(b) has filed a civil lawsuit in connection with this incident. The notice of claim, dated § 87(2)(b), states that § 87(2)(b) suffered “physical and psychological injuries” as the result of “false arrest, assault and battery, abuse of process, negligence, intentional infliction of emotional distress [and] false imprisonment.”

### **Results of Investigation**

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male. He stands 5’9” tall and weighs about 160 lbs. On the date of his interview, § 87(2)(b)

§ 87(2)(b) was interviewed on 9-13-06. He stated that on 6-30-06 at about 3:45 AM, he was outside a club on West 27<sup>th</sup> Street with some people he knew, including § 87(2)(b), § 87(2)(b), and § 87(2)(b) when two groups of men began arguing near the corner of Eleventh Avenue. § 87(2)(b) stated that he and § 87(2)(b) knew a few of the people involved, but § 87(2)(b) did not know their names. § 87(2)(b) and § 87(2)(b) broke up the argument. Several bouncers from the club were also outside at that time. After the argument broke up, § 87(2)(b), § 87(2)(b), § 87(2)(b), and about twenty other people began walking toward Eleventh

Avenue. § 87(2)(b) was talking to § 87(2)(b) § 87(2)(b) on his cellular phone. § 87(2)(b) walked ahead of him toward Eleventh Avenue.

At that point, § 87(2)(b) turned around and saw LT Lauterborn pull out an asp and begin running toward § 87(2)(b). Without giving any verbal commands to § 87(2)(b), LT Lauterborn pushed him in the back. § 87(2)(b) dropped his phone, turned around and put his hands up. LT Lauterborn then struck § 87(2)(b) in the top of head with the asp. A struggle ensued and LT Lauterborn struck § 87(2)(b) in the side with the asp, at which point § 87(2)(b) and the lieutenant broke away from each other. § 87(2)(b) angrily asked LT Lauterborn why he had hit him. § 87(2)(b) observed that § 87(2)(b) was bleeding from his face and head. When § 87(2)(b) began walking away from LT Lauterborn, he tried to strike § 87(2)(b) with the asp again. § 87(2)(b) stepped in between him and § 87(2)(b) and said, "We're leaving! Why are you trying to hit him again?" LT Lauterborn did not respond. He appeared to be scared and ran toward the bouncers.

Seconds later, another officer grabbed § 87(2)(b) in a headlock from behind and threw him against a car. The left side of § 87(2)(b)'s body and face struck the side of a car that was stopped in the street. § 87(2)(b) believed that he was unconscious for a few seconds because the next thing he knew, he was on the ground and being kicked. When he stood up, the same officer who had initially grabbed him, a white male in his forties with gray hair who stood about 6'3" tall, grabbed him by the throat with one hand and two other officers, whom he could only describe as white males, grabbed his arms. § 87(2)(b) told the officers, "Put the cuffs on," and handcuffed him.

After § 87(2)(b) was handcuffed, an officer with badge number 11226 punched him in the left side of the jaw with his right hand. § 87(2)(b) stumbled to the right and officer # 11226 grabbed him, spun him around and slammed him against a car while repeatedly calling him a "bastard." § 87(2)(b) denied resisting arrest. The officer shoved him inside a police car, put his badge against the window and said, "You see that you little bastard? Shut up!" and walked away. Shortly afterward, officer # 11226 entered the driver seat of the police car and his partner, a short, chubby white male with a receding hairline, entered the passenger seat. No one was in the backseat with § 87(2)(b). From the backseat, § 87(2)(b) saw § 87(2)(b) and § 87(2)(b) being arrested. He saw an officer punch § 87(2)(b) in the stomach and officers holding § 87(2)(b) § 87(2)(b) § 87(2)(b). § 87(2)(b) stated that he did not see § 87(2)(b) and § 87(2)(b) resisting.

§ 87(2)(b) was transported to the 10<sup>th</sup> Precinct stationhouse and stood at the desk with § 87(2)(b) and § 87(2)(b). They were laughing and saying that it was crazy that they had been arrested. § 87(2)(b) did not see any injuries to § 87(2)(b) or § 87(2)(b). He began feeling pain to his jaw after he was placed in a cell, so he requested an icepack. PO Garrity asked § 87(2)(b) if he wanted to go to the hospital, but he declined because he did not want to stay in the stationhouse any longer than necessary.

§ 87(2)(b)'s shoulder started bothering him when he returned to work, so he went to § 87(2)(b) in New Rochelle on § 87(2)(b). His shoulder was X-rayed and he was told that his shoulder was probably sprained. § 87(2)(b) went to his private doctor on § 87(2)(b) and was referred to a specialist, who told § 87(2)(b) that he had a separated clavicle and a sprained shoulder and forearm. § 87(2)(b) stated that he also told the doctors that he had been punched in the face, but they did not treat him for that. He was prescribed pain medication.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male. He stands 5'11" tall and weighs about 170 lbs.  
§ 87(2)(b)

§ 87(2)(b) was interviewed on 9-13-06. He stated that on 6-30-06 at about 3:45 AM, he left a club with § 87(2)(b), § 87(2)(b), § 87(2)(b) and two of § 87(2)(b)'s friends. § 87(2)(b) stated that they were about twenty feet away from the entrance to the club and were under an overpass closer to the corner when they observed a group of men involved in a verbal altercation outside the club. The altercation did not become violent. Police arrived at the scene after the situation had calmed down. § 87(2)(b) was standing with § 87(2)(b) when he looked behind him and saw LT Lauterborn holding an asp and walking quickly toward the altercation. LT Lauterborn approached § 87(2)(b) from behind. § 87(2)(b) stated that there was a lot of yelling, but did not hear LT Lauterborn saying anything. LT Lauterborn raised the asp to strike § 87(2)(b) at which point § 87(2)(b) began turning around to face him. § 87(2)(b) stated that he had an unobstructed view of § 87(2)(b) at that time. He did not see LT Lauterborn make any physical contact with § 87(2)(b) before that. Other officers were dispersing the crowd at that point, so § 87(2)(b) turned away and began following § 87(2)(b) and numerous other civilians who were walking away toward the corner. He did not see LT Lauterborn strike § 87(2)(b) with the asp.

A minute later, § 87(2)(b) looked behind him again and saw § 87(2)(b) bleeding from the face. At that point, a large bouncer from the club suddenly grabbed § 87(2)(b) from behind and told him to "Calm down!" A short plainclothes officer then handcuffed § 87(2)(b). Another officer grabbed § 87(2)(b) and handcuffed him. § 87(2)(b) saw officers strike § 87(2)(b) against a police vehicle while they were placing him inside. A white male officer in his forties who stood about 5'11" tall and had blond hair placed § 87(2)(b) against an unmarked vehicle. § 87(2)(b) did not resist. He asked the officer to loosen the handcuffs because they were cutting into his wrists, but the officer said, "Shut the fuck up!"

### **Attempts to Contact Witnesses**

The undersigned investigator called Club Spirit and found that their bouncers worked for § 87(2)(b). § 87(2)(b) stated that they had no employee by the name of § 87(2)(b) but that a bouncer named § 87(2)(b) was working at the club during the incident. The undersigned contacted § 87(2)(b) on 11-6-06. § 87(2)(b) stated that he knew LT Lauterborn, but did not recall the incident on 6-30-06.

Letters were sent to § 87(2)(b) residence on 8-10-06 and 8-18-06. The undersigned subsequently spoke to § 87(2)(b) and arranged interview appointments for him on 10-11-06 and 10-13-06. § 87(2)(b) missed both appointments and has not called to reschedule. After making repeated calls to § 87(2)(b) by telephone, the undersigned reached her on 10-10-06 and arranged to interview her and a friend who was with her during the incident, § 87(2)(b) on 10-11-06. When the undersigned called § 87(2)(b) on 10-11-06 to confirm the appointment, she stated that § 87(2)(b) would not be there. The undersigned asked her to call him and arrange another appointment when he could interview her and § 87(2)(b) together. However, § 87(2)(b) never called the undersigned to reschedule the appointment and did not respond to subsequent attempts to contact her.

### **Officer Testimony – Lieutenant Theodore Lauterborn**

*On 6-30-06, LT Lauterborn was the supervisor of the 10<sup>th</sup> Precinct Cabaret Unit. That assignment involves conducting quality of enforcement around nightclubs in the area. LT Lauterborn was dressed in uniform and was working alone. LT Lauterborn is a white male who stands 5'10" tall and weighs about 225 lbs.*

LT Lauterborn was interviewed on 8-18-06. He stated that on 6-30-06 at about 3:45 AM, he was sitting in his vehicle, which was parked on West 27<sup>th</sup> Street between Tenth and Eleventh

Avenues. An employee of “Club Spirit New York” approached LT Lauterborn. LT Lauterborn stated that the employee is a Hispanic male in his forties who stands about 5’10” tall and weighs 200 lbs. The employee routinely checks identification and deals with admission to the club. The employee directed LT Lauterborn’s attention to a group of about ten to twenty males and said that they had been involved in a fight inside the club.

The group was leaving the club and heading eastbound on West 27<sup>th</sup> Street toward Tenth Avenue. LT Lauterborn left his vehicle and observed that about six members of the group had stopped on the block. They were acting in a loud and boisterous manner, and harassing other people on the block by intentionally obstructing their path. Two of them were later identified as § 87(2)(b) and § 87(2)(b). LT Lauterborn walked down the block toward the group and called over the radio for another unit to respond and assist in dispersing the crowd. He yelled at the group to keep moving and leave the block. Four or five members of the group did not comply, so LT Lauterborn specifically ordered them to leave the block. § 87(2)(b) said, “I’m not leaving this block.” The other members of the group moved slowly. LT Lauterborn noticed that § 87(2)(b)’s hands were balled into fists at his sides, so he took his asp out with his right hand and told § 87(2)(b) that he would be arrested if he did not leave the block. § 87(2)(b) responded, “You’re not putting me under arrest.” He put one of his feet behind him and took a position that LT Lauterborn described as a “combat stance.” § 87(2)(b) then advanced toward LT Lauterborn and got extremely close to him. LT Lauterborn stated that § 87(2)(b) appeared to be intoxicated because he was slurring his words and his eyes were red. He did not smell alcohol on § 87(2)(b)’s breath.

A crowd of people surrounded LT Lauterborn. At that point, § 87(2)(b) approached LT Lauterborn from the right side and asked what was going on. It appeared as if § 87(2)(b) wanted to mediate the matter. LT Lauterborn told him and the others to leave the block and that § 87(2)(b) was under arrest. § 87(2)(b) continued to approach LT Lauterborn and began acting in a threatening manner. LT Lauterborn pushed § 87(2)(b) back with his left hand and kept his left arm outstretched and ordered § 87(2)(b) to stay where he was, but § 87(2)(b) kept coming toward him. LT Lauterborn began swinging his asp in a downward motion to strike § 87(2)(b) in the leg. As LT Lauterborn swung the asp, § 87(2)(b) came toward LT Lauterborn from the right side and LT Lauterborn accidentally struck him in the forehead with the asp. LT Lauterborn described it as a glancing blow. LT Lauterborn denied striking § 87(2)(b) with the asp a second time or striking anyone else with the asp. LT Lauterborn observed a cut on § 87(2)(b)’s forehead seconds after striking him. People in the crowd said, “Oh shit, he just hit him! Let’s get out of here!” and fled the scene. § 87(2)(b) and § 87(2)(b) also fled. At that time, numerous additional officers began arriving at the scene and stopped people in the crowd. LT Lauterborn pointed in the direction that § 87(2)(b) and § 87(2)(b) fled and directed the responding officers to stop them. § 87(2)(b) and § 87(2)(b) continued running and officers pursued them. PO McGee caught § 87(2)(b). LT Lauterborn saw several unidentified officers attempting to arrest § 87(2)(b). § 87(2)(b) pushed one of the officers and was taken to the ground. § 87(2)(b) resisted being handcuffed by flailing his arms and moving his body. LT Lauterborn stated that he was not punched or kicked.

The officers leaned on § 87(2)(b) and tried to get his hands behind his back. One of them had his knees on § 87(2)(b)’s legs. LT Lauterborn did not assist in handcuffing § 87(2)(b). LT Lauterborn looked for § 87(2)(b) but could not see him. He saw unidentified officers involved in a physical confrontation with four or five other civilians. LT Lauterborn then spotted § 87(2)(b) who had already been handcuffed. He did not observe any physical force used against § 87(2)(b). LT Lauterborn did not speak to § 87(2)(b). He saw § 87(2)(b) placed in an ambulance. LT Lauterborn denied ever using profanity or racial slurs during the incident and denied hearing any other officer using such language.

**Police Officers Thomas Garrity & Christopher McGee**

*On 6-30-06, POs Garrity and McGee were dressed in uniform and assigned to the 10<sup>th</sup> Precinct Cabaret Unit. PO Garrity is a white male who stands 5'10" tall and weighs about 170 lbs. PO McGee is a white male who stands 5'8" tall and weighs about 168 lbs.*

PO Garrity prepared the arrest reports for § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) show that they were charged § 87(2)(a) 160.50. The narrative of the reports reads as follows:

§ 87(2)(a) 160.50  
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The reports indicate that physical force was used against them to “overcome assault.”

PO Garrity was interviewed on 8-18-06. They stated that at on 6-30-06 at about 3:50 AM, the cabaret supervisor, LT Lauterborn, requested that they respond to West 27<sup>th</sup> Street and Tenth Avenue to assist him with a crowd. He gave no further information. At 3:57 AM, central put over a 10-13 at the same location, which means that an officer urgently needs assistance after a passing taxi driver called 911 regarding an incident at the same location. When PO Garrity arrived, he saw LT Lauterborn and several other officers at the scene. LT Lauterborn was on West 27<sup>th</sup> Street near the corner of Tenth Avenue. He had his asp out and was following about twenty mostly Hispanic youths on West 27<sup>th</sup> Street. He described the group as “tumultuous” and stated that members of the group were hitting each other. The group was blocking the sidewalk and the street.

PO Garrity approached LT Lauterborn and asked him what was going on. LT Lauterborn pointed out several people in the group and said, “Arrest them.” PO Garrity approached the group and handcuffed two individuals. He identified the arrest photographs of § 87(2)(b) and § 87(2)(b) as the people he handcuffed. They did not resist being handcuffed. PO Garrity did not know what PO McGee did. Two other officers handcuffed two other individuals, who were later identified as § 87(2)(b) and § 87(2)(b). PO Garrity did not see any other officers using physical force or struggling with anyone. The interviewing investigator showed PO Garrity the 10<sup>th</sup> Precinct Tour 1 Roll Call from 6-30-06, but he was unable to identify any other officers at the scene. He stated that plainclothes officers from the Manhattan South Anti-Crime Unit were also there.

PO Garrity was the arresting officer for the four people arrested at the scene. PO Garrity denied using physical force against anyone. An ambulance was called for § 87(2)(b) and two officers escorted him to § 87(2)(b). Other officers transported the other three prisoners to the 10<sup>th</sup> Precinct stationhouse. PO Garrity stated that LT Lauterborn told him that when he tried to stop the group from fighting, the group surrounded him and that two individuals got in his face and squared off. LT Lauterborn added that when one of the individuals came at him, he went to use his asp to defend himself because he feared serious physical injury. At that point, the other individual, § 87(2)(b) charged at LT Lauterborn and LT Lauterborn struck him with the asp. PO Garrity returned to the stationhouse at 4:15 AM and began preparing the arrest paperwork. At the stationhouse, he heard § 87(2)(b) state that he had been struck with a baton. PO Garrity denied using profanity or racial slurs during the incident. He did not recall hearing § 87(2)(b) use profanity.



PO McGee was interviewed on 8-30-06. He stated that when LT Lauterborn initially requested that they respond to the scene, his voice sounded “rushed” and there was screaming in the background. Consequently, he and PO Garrity responded with lights and siren. At 3:57 AM, a 10-13 was called at the same location and other units began responding. When PO McGee arrived at the location, a crowd of over twenty people was there. LT Lauterborn was in the street and people were around him. PO McGee saw blood on LT Lauterborn’s face and on his shirt, which led him to believe that LT Lauterborn was injured. PO McGee estimated that the crowd was about ten feet from LT Lauterborn, but stated that some people were closer to LT Lauterborn. PO McGee did not see anyone struggling with LT Lauterborn or making physical contact with him at that time and did not recall seeing him holding an asp.

LT Lauterborn pointed to § 87(2)(b) and said, “Grab him, he’s under arrest!” PO McGee said, “Stop, police!” and grabbed him by the wrist. In response, § 87(2)(b) pushed him in the chest with two hands and PO McGee let go of him. PO McGee went back toward § 87(2)(b) and grabbed his wrist again. § 87(2)(b) pushed him in the upper body, causing PO McGee to lose his grip on § 87(2)(b). § 87(2)(b) then ran northbound on Tenth Avenue, turned around and ran three southbound, returning to the original scene. PO McGee lost sight of him in the crowd. Several other officers were also chasing § 87(2)(b) but PO McGee could not identify them. PO McGee believed that § 87(2)(b) was intoxicated because he was “combative and belligerent” and was cursing. § 87(2)(b) said, “Come on nigger, I can run all night!” while PO McGee was pursuing him. Shortly afterward, PO McGee spotted § 87(2)(b) standing in the crowd.

LT Lauterborn pointed out § 87(2)(b) to PO Garrity and said, “Lock him up!” PO Garrity grabbed § 87(2)(b) and handcuffed him. PO McGee did not recall whether § 87(2)(b) resisted being handcuffed. PO McGee observed blood coming from § 87(2)(b)’s forehead, but did not know how he sustained that injury. He did not see any officers struggling with or arresting anyone else. An ambulance arrived at the scene for § 87(2)(b) and he was transported to § 87(2)(b). PO McGee went in the ambulance with him and guarded him in the hospital. § 87(2)(b) stated that he had been struck with a nightstick.

PO McGee transported § 87(2)(b) to the stationhouse after he received treatment at the hospital. He denied using profanity or racial slurs during the incident and stated that he did not hear other officers use such language. PO McGee did not recognize the arrest photographs of § 87(2)(b), § 87(2)(b) or § 87(2)(b).

### **Police Officers Patrick Mooney & Robert McGarvey**

*On 6-30-06, POs Mooney and McGarvey were dressed in uniform and assigned to patrol sector BD. PO Mooney is a white male who stands 5’9” tall and weighs about 225 lbs. PO McGarvey is a white male who stands 5’9” tall and weighs 180 lbs.*

PO Mooney was interviewed on 8-28-06. He stated that on 6-30-06 at about 4:00 AM, he and PO McGarvey responded to a call for assistance put over by LT Lauterborn. PO McGarvey stated that he sensed urgency in LT Lauterborn’s voice. Central initially had difficulty hearing what LT Lauterborn was saying. A few seconds later, LT Lauterborn said something to the effect of “Ten boy, I need you over here now!”

When PO Mooney arrived, a large crowd of civilians was on the sidewalk and the street and ten to fifteen officers were there. When the interviewing investigator asked if the civilians were screaming, yelling or fighting, PO Mooney replied, “Not by the time we got there” and that the crowd was dispersing. PO Mooney saw LT Lauterborn for “a split second” and observed that LT Lauterborn appeared to be uninjured. He never spoke to LT Lauterborn.

PO Mooney then observed about three other officers standing with a male in the middle of the street. PO McGee was handcuffing § 87(2)(b) who had a laceration to his forehead.

PO Mooney believed that they were cabaret officers and identified one of them as PO McGee. § 87(2)(b) was not physically resisting at that time. PO Mooney recognized the arrest photograph of § 87(2)(b) § 87(2)(b) and § 87(2)(b) as prisoners he saw later at the stationhouse. He did not see any of them at the scene. PO Mooney later transported § 87(2)(b) § 87(2)(b) and PO McGee from § 87(2)(b) to the stationhouse. § 87(2)(b) had a bandage on his head. Neither § 87(2)(b) nor PO McGee provided PO Mooney with any further information about what had happened.

PO McGarvey was interviewed on 10-12-06. He stated that when he arrived at the scene, he saw a large crowd of about two-hundred civilians in the intersection of West 27<sup>th</sup> Street and Tenth Avenue, in the street and on the sidewalk. LT Lauterborn was standing in the street, talking on his radio and dispersing the crowd. PO McGarvey stated that the crowd was loud, drunk and disorderly. Five to ten uniformed officers were at the scene. Several of them were from the 10<sup>th</sup> Precinct, including PO Garrity, PO McGee, PO Rizzo, PO Candela and SGT Abbruzzese. Task Force officers, as well as officers from Manhattan North Borough Anti-Crime, were also there. PO McGarvey did not see any physical struggles occurring and did not see anyone with injuries. He did not speak to LT Lauterborn or any other officers at the scene about what had happened.

Almost immediately after arriving at the scene, PO McGarvey saw § 87(2)(b) running northbound on Tenth Avenue and four or five officers running after him. PO Mooney joined in the foot pursuit and PO McGarvey followed in a marked vehicle. After driving a little over a block, PO McGarvey saw the officers involved in the foot pursuit running back toward him. PO McGarvey made a u-turn and followed the officers back to West 27<sup>th</sup> Street and Tenth Avenue. He saw § 87(2)(b) run back into the crowd and the officers run after him. PO McGarvey left his vehicle and also ran into the crowd. Seconds later, LT Lauterborn pointed § 87(2)(b) out and said, "That's the guy right there!" POs McGarvey, Garrity and McGee grabbed him, and PO McGarvey handcuffed him. § 87(2)(b) did not resist. PO McGarvey brought the man to his vehicle and placed him against his vehicle. § 87(2)(b) was never slammed against the vehicle and his hand or finger was never twisted. PO Mooney placed § 87(2)(b) into the backseat of their vehicle.

LT Lauterborn ordered PO Mooney to drive § 87(2)(b) a block away from the scene and wait for EMS because § 87(2)(b)'s face was bleeding. He never told PO Mooney what had happened to the man or state how the man had been injured. When EMS arrived, PO McGarvey told § 87(2)(b) to step out of the vehicle and handed him over to PO McGee, who went in the ambulance with § 87(2)(b). PO McGarvey did not observe anyone else being arrested.

### **Police Officers Glenn Edmonds & Brian Carr**

*On 6-30-06, POs Edmonds and Carr were dressed in uniform and assigned to patrol sector EFG. PO Edmonds is a white male who stands 6'3" tall and weighs about 230 lbs. PO Carr is a white male who stands 5'8" tall and weighs about 215 lbs.*

PO Edmonds was interviewed on 8-30-06. He stated that on 6-30-06 at about 3:55 AM, LT Lauterborn requested assistance with a large crowd and he responded. PO Edmonds stated that LT Lauterborn might have called for assistance again, but did not recall him putting a 10-13 over. When POs Edmonds and Carr arrived, a loud and angry crowd of about twenty people was in the intersection and walking northbound on Tenth Avenue. LT Lauterborn was in the midst of the crowd and was trying to grab hold of a male, who was pushing LT Lauterborn in the chest and trying to escape. PO Edmonds did not see § 87(2)(b) try to punch LT Lauterborn and did not see LT Lauterborn holding an asp.

PO Edmonds then observed a second male come up behind LT Lauterborn and attempt to grab LT Lauterborn's arms. PO Edmonds could not describe either man and did not recognize the arrest photographs of § 87(2)(b), § 87(2)(b), § 87(2)(b) or § 87(2)(b). Others in the crowd were bumping LT Lauterborn and trying to get in his way as he tried to apprehend the first man. PO Edmonds entered the crowd and grabbed the second man from behind. The man tried to pull away, so PO Edmonds tightened his grip and pulled him out of the crowd. As PO Edmonds pulled the man out of the crowd and tried to spin him around, PO Edmonds and the man both stumbled into a taxi that was stopped in traffic. When asked what he said to the man, PO Edmonds replied that he probably identified himself as a police officer and told the man to stop resisting. After hitting the taxi, the man slid down to a seated position and PO Edmonds held him there.

Additional officers arrived at the scene. The crowd was still verbally protesting at that time, but PO Edmonds did not see any physical struggles occurring and did not see anyone struck with an asp. LT Lauterborn ordered that the man who PO Edmonds grabbed should be arrested and another officer handcuffed him. PO Edmonds did not recall the man resisting and could not say if he appeared to be intoxicated. POs Edmonds and Carr transported him to the 10<sup>th</sup> Precinct stationhouse at 4:10 AM. PO Edmonds did not observe any injuries to the man and did not remember hearing him complain of injuries.

PO Carr was interviewed on 10-10-06. He stated that his memo book indicated that he and PO Edmonds responded to the incident, but he had no independent recollection of it.

### **Sergeant Michael Abbruzzese & Police Officer Vincent Candela**

*On 6-30-06, SGT Abbruzzese was the 32<sup>nd</sup> Precinct patrol supervisor and was working with PO Candela. They are both white males who stand 5'9" tall and weigh about 175 lbs.*

SGT Abbruzzese and PO Candela were interviewed on 11-6-06 and 3-16-07, respectively. They stated that when they arrived at the scene, the situation was under control. They did not take part in arresting anyone or observe anyone being arrested.

### **Medical Documents**

The Ambulance Call Report for § 87(2)(b) shows that he arrived at § 87(2)(b) on § 87(2)(b) at § 87(2)(b). The report states, "§ 87(2)(b)-old male alert and oriented x 3 found ambulatory on scene in police custody bleeding from forehead, laceration occurred during patient resisting arrest." § 87(2)(b) stated that he did not lose consciousness and did not feel dizzy. He admitted being intoxicated, but denied being under the influence of drugs.

§ 87(2)(b)'s medical records from § 87(2)(b) indicate that he was registered as a patient on § 87(2)(b) at § 87(2)(b). His triage form and the physician's notes state that he had a laceration to his forehead and denied losing consciousness and denied feeling dizzy. Sutures were applied to close the laceration on his forehead.

§ 87(2)(b) returned to the hospital on § 87(2)(b) at about § 87(2)(b) and reported that he had been struck in the abdomen with a nightstick. He complained of drowsiness and blurry vision, and said that he was seeing "floaters/spots." He also complained of pain and bruising to his left flank, as well as swelling and numbness to his right thumb and his left index finger. § 87(2)(b) was seen by a physician. A physical exam revealed bruising and tenderness to his left flank. § 87(2)(b) reported that he had suffered a dislocated shoulder in 2003. He went to § 87(2)(b) on § 87(2)(b) to have the sutures removed.

§ 87(2)(b) went to § 87(2)(b) on § 87(2)(b) and complained of pain to his left shoulder and jaw as a result of being assaulted three days before. The records state, § 87(2)(b) is a § 87(2)(b)-old male who reports injuring left shoulder when being

restrained...Now complains of local pain aggravated by motion.” A physical examination revealed “tenderness of posterior shoulder” and X-ray showed no evidence of a fracture. § 87(2)(b) was diagnosed with a shoulder sprain. His shoulder was immobilized with a sling and he was prescribed Motrin for pain. In addition, § 87(2)(b) was instructed to apply a cold compress to his shoulder and follow-up with an orthopedist. § 87(2)(b) visited § 87(2)(b) on § 87(2)(b) and complained of pain to his left shoulder and forearm as a result of being thrown into a taxi. He was diagnosed with a separated left shoulder, a shoulder strain and a forearm strain. § 87(2)(b) was prescribed medication for pain.

### **Police Documents**

§ 87(2)(b)'s arrest photograph shows a cut to his forehead. The arrest photographs of § 87(2)(b), § 87(2)(b) and § 87(2)(b) do not show any visible injuries.

According to the 10<sup>th</sup> Precinct command log for 6-30-06, § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were brought into the stationhouse at 4:08 AM. The entry regarding § 87(2)(b) states that he had a laceration to the forehead and was transported to § 87(2)(b) from the scene. The entries regarding § 87(2)(b), § 87(2)(b) and § 87(2)(b) list their physical condition as apparently normal.

### **Status of Criminal Charges**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Criminal Conviction Histories**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **CCRB Histories of Subject Officers**

LT Lauterborn has no substantiated CCRB allegations on his record over sixteen years on the force. § 87(4-b) § 87(2)(g)

POs Garrity and McGee have no substantiated CCRB cases on their records over their respective three and four years on the force. POs McGarvey and Edmonds have no substantiated CCRB cases on his record over their respective thirteen and sixteen years on the force.

## **Conclusions and Recommendations**

### **Undisputed facts**

It is undisputed that LT Lauterborn struck § 87(2)(b) in the head with an asp and PO Edmonds used physical force against § 87(2)(b) § 87(2)(g)

## Officer Identification

§ 87(2)(g) The officer testimony indicates that POs Garrity, McGee and McGarvey arrested § 87(2)(b) when § 87(2)(b) returned to the scene and LT Lauterborn pointed him out. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that three officers, including a uniformed white male officer in his forties with shield number 11226, who stood about 6'3" tall, used physical force against him during his arrest. PO Edmonds is a § 87(2)(b) -old white male who shield number 12274 and stands 6'3" tall. § 87(2)(b), § 87(2)(g)

## Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) told CPT Longo that he approached LT Lauterborn and "got into his face" before LT Lauterborn struck him with the asp, but never mentioned that to the undersigned. In fact, he told the undersigned that he complied with all of LT Lauterborn's commands. In addition, while § 87(2)(b) told the undersigned that three other officers threw him against a police vehicle and repeatedly kicked in the ribs after he was handcuffed, CPT Longo's report makes no mention of that. § 87(2)(b), § 87(2)(g)

In his testimony, § 87(2)(b) not only admitted that he was in the same area as § 87(2)(b) when LT Lauterborn struck him, but also that he actually stepped in between § 87(2)(b) and LT Lauterborn to prevent LT Lauterborn from striking him again. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

LT Lauterborn called for an additional unit to respond and then urgently called for backup. In addition, a civilian called 911 and stated that a police officer was being beaten by a group of males at the location. Even § 87(2)(b) himself testified that LT Lauterborn looked scared. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to LT Lauterborn,

he pushed § 87(2)(b) and began to swing the asp at § 87(2)(b)'s leg, at which point he accidentally struck § 87(2)(b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) In addition, the Unusual Occurrence Report regarding this incident, prepared by CPT Longo, does not indicate that LT Lauterborn struck § 87(2)(b) by accident. LT Lauterborn's account was not included in the report. § 87(2)(b), § 87(2)(g)

**A. Force: Lieutenant Theodore Lauterborn struck § 87(2)(b) with an asp.**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) In *PD v. Freeman* (1999), a civilian, Michael Cardoza, refused a lawful order, clenched his fists and advanced toward the respondent officer. After warning Mr. Cardoza that he would be struck with a nightstick if he did not comply, the officer hit him in the thigh with a nightstick. The Administrative Law Judge ruled that while the officer's striking Mr. Cardoza in the thigh was justified, a blow to a more vulnerable area of the body might be considered deadly physical force under some circumstances.

LT Lauterborn stated that § 87(2)(b) refused to comply with verbal commands to move and that his hands were balled into his fists at his sides. According to the "Escalating Scale of Force" in the Police Academy Curriculum, an officer can use "impact techniques" such as "batons, fists and feet" when a civilian is physically assaulting them. It is undisputed that § 87(2)(b) was not assaulting LT Lauterborn when he was struck. § 87(2)(g)

**B. Force: Police Officer Thomas Garrity used physical force against § 87(2)(b)**

**C. Force: Police Officer Christopher McGee used physical force against § 87(2)(b)**

**D. Force: Police Officer Robert McGarvey used physical force against § 87(2)(b)**

§ 87(2)(b) also alleged that after he returned to the scene, officers handcuffed him, threw him against a vehicle and repeatedly kned him in the side. However, neither the Unusual Occurrence Report nor § 87(2)(b)'s medical records indicate that he made such an allegation.

§ 87(2)(b) also admitted that he failed to tell IAB investigators that he was kned in the side.

§ 87(2)(b), § 87(2)(g)

**E. Force: Police Officer Glenn Edmonds used physical force against** § 87(2)(b)

**F. Force: Officers used physical force against** § 87(2)(b)

§ 87(2)(b), § 87(2)(g) He stated that he stepped in between § 87(2)(b) and LT Lauterborn after LT Lauterborn struck § 87(2)(b) with the asp, after which he was put in a headlock, thrown against a car, kicked, grabbed by the throat, handcuffed and punched in the face. Like § 87(2)(b), § 87(2)(b) completely denied resisting or doing anything that led the officers to arrest him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**G. Discourtesy: Officers spoke obscenely and/or rudely to** § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: